IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9985 OF 2004

Kum. Rekha Satyanarayan Jaju ... Petitioner

V/s

Smt. Sonubai Hindurao Gaikwad & anr. ... Respondents

Mr. M.M. Sathaye for the petitioner.

Mr. Pankaj Das for the respondents.

CORAM: P.V. KAKADE, J.

DATED: 14TH MARCH, 2006

P.C.:

1. Heard learned counsel for both parties. Perused the record.

2. The petitioner tenant has preferred this petition against the judgment and order passed by the Ad-hoc Addl. District Judge, Solapur, dated 28.7.2004 dismissing the appeal and confirming the Trial Court judgment in R.C.S. No. 936 of 1997, dated 26.4.2002 decreeing the suit for eviction against the present petitioner.

3. The respondent plaintiffs filed the suit under the provisions of the Bombay Rent Act against the petitioner tenant on various grounds including the ground contemplated under Sec. 13(1)(g) of the Bombay Rent Act and averred that the plaintiffs were the owner of the suit property consisting of Block No. 31, "Shashikala Bhavan" situated at Mohite Nagar, Hotigi Road, Solapur. Deceased Sattyanarayan Jaju - father of defendants had agreed to pay monthly rent of Rs.500/- to the landlord. Sattyanarayan Jaju died leaving behind his family members including the wife, a son and two daughters. The plaintiff submitted that he alongwith his wife resided in the house located at agricultural land at village Vadkbal. Pending the suit, the original plaintiff died leaving behind the present respondents and after death of her husband respondent No.1 alone was residing in the agricultural land where there was no facility of water, eletricity in the said house. Plaintiff No.1-B Shantikumar is son of plaintiff No.1-A Sonubai. Shantikumar alongwith his wife and children are residing in the house owned by his wife. Therefore, it is difficult for Sonubai to reside with Shantikumar and, therefore, she required the suit premises reasonably and bonafide for use and occupation in her old age after the death of her husband.

4. The learned Trial Judge, after hearing both parties and on the basis of available evidence, came to the conclusion that the plaintiff had proved that the suit premises are required for reasonable and bonafide requirement for his own use. It is also submitted that the greater hardship would be caused if decree is passed than refused to pass it and as such the decreed the suit.

5. The appeal was carried to the District Court at Solapur. The learned lower appellate Court Judge, after hearing both parties, came to the conclusion that the plaintiff had proved her case under Sec. 13(1)(g) of the Bombay Rent Act and decreed the suit accordingly. Hence the present petition.

6. It may be noted at this stage that pending this petition it was found that the lower appellate Court had not recorded his specific finding on the issue of greater hardship and therefore the said issue was referred back to the lower appellate Court to record its finding on the said issue. Accordingly, the finding was recorded and the matter was sent back wherein the finding was recorded to the effect that the plaintiff

would suffer greater hardship if the decree is refused to be passed than the defendant.

7. The learned counsel for the petitioner made submission on the basis of the discussion by the lower appellate Court on the issue of bonafide requirement stating that the learned lower appellate Court had not taken into account the needs of requirements of the respondent No.1 i.e. plaintiff No.1-A but has dealt upon the needs of plaintiff No.1-B i.e. son of plaintiff No.1-B. On this basis it was submitted that there was no pleading to that effect and, therefore, the lower appellate Court erred in coming to the conclusion holding that the respondent No.1 had proved her case of bonafide and reasonable requirement of the suit premises. In support of his submissions, the learned counsel for the petitioner sought to put reliance upon the ruling of the Single Judge of this Court in the case of **C.C.Yi (Dr.) v/s Janakidevi Anantlal Gupta & ors., reported in 2001 (4) Bom.C.R. 834,** wherein it was observed that the contention which if proved would be sufficient to deny the relief to opposite party and such contention has to be specifically pleaded and then proved. If there is no pleading, there is no question of proving something which is not pleaded. In my

considered view, there cannot be two opinions regarding the ratio laid down by this Court. However, it is clear that this would not be applicable to the facts involved in this case. In the present case, the lower appellate Court has, after dealing with the evidence on record, has concluded that respondent No.1 Sonubai is 70 years' old and is in utmost need of the suit premises for her own use and residence. Perusal of the judgment of the lower appellate Court also shows that the learned Judge has dealt upon the ancilliary facts which have come on record in order to show the genuine need of respondent No.1 and, therefore, it would not be correct to say that what is discussed is the need of the son of respondent No.1 and, therefore, the judgment of the lower Court is bad in law as the needs of the son were not pleaded . Be that as it may, the fact remains that the evidence on record is sufficient to show that the original plaintiff has proved her bonafide requirement of the suit premises in her old age.

8. Similarly, the findings recorded by the lower appellate Court, on the issue of greater hardship, also are sufficient to show that the suit property is not in use of the present petitioner and in fact it is kept under lock. This aspect would also bolster the need of

the plaintiff in respect of the suit premises.

9. In short, I am satisfied that the reasonings adopted and findings recorded by both the Courts below are seen to be just, legal and proper and, therefore, would brook no interference.

In the result, the petition stands dismissed with no order as to costs.

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